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Introduction

1. In this fourth report to the Working Group on the Right to Development,[1] the independent expert concentrates specifically on the methods of implementing the right to development. In section I, the conceptional framework from the previous reports is summarized in a way that helps implementation. In section II, national actions are discussed. Section III is concerned with international cooperation.

I. THE CONCEPT AND THE CONTENT OF THE RIGHT TO DEVELOPMENT AS THE RIGHT TO A PROCESS

2. In his earlier reports[2] the independent expert examined the content of the right to development in great detail.[3] The definition of the right to development as the right to a particular process of development in which "all human rights and fundamental freedoms can be fully realized" is consistent with the approach of the human rights movement. It refers to the realization of all the rights and freedoms recognized as human rights - civil and political rights and economic and social and cultural rights - in their totality as an integrated whole, as all these rights are interrelated and interdependent. The outcomes of development, as well as the way the outcomes are realized, constitute the process of development which is regarded as a human right. It is a process in time, not a finite event, and the elements that constitute development are interdependent, both at a point in time and over a period of time.

3. The right to development as the right to a process of development is not just an umbrella right or the sum of a set of rights. It is the right to a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value. The independent expert described this right to development in terms of an improvement of a "vector" of human rights, which is composed of various elements that represent the different economic, social and cultural rights, as well as the civil and political rights. All these rights, in turn, are dependent on each other, together with the growth of gross domestic product (GDP) and other financial, technical and institutional resources, in a manner that enables any improvement in the well-being of the entire population and the realization of the rights to be sustained.

4. The characteristics of this vector also specify the nature of the right to development and the methods of its realization. First, each element of the vector is a human right, just as the vector itself is a human right, since the right to development is an integral whole of those rights. This means that they all will have to be implemented in a "rights-based" manner, which is defined as a manner that follows the procedures and norms of human rights laws, and which is transparent, accountable, participatory and non-discriminatory, with equity in decision-making and sharing of the fruits or outcomes of the process. Secondly, all the elements are interdependent, both at any point in time and over a period of time. They are interdependent in the sense that the realization of one right, for example the right to health, depends on the level of realization of other rights, such as the right to food, or to housing, or to liberty and security of the person, or to freedom of information, both at the present time and in the future. Similarly, realization of all these rights in a sustainable manner would depend upon the growth of GDP and all other forms of resources, including institutions and technology, which in turn would depend upon the realization of the rights to health and education, as well as to freedom of information. Thirdly, an improvement in the realization of the right to development, or an increase in the

value of the vector, will be defined as an improvement in all the elements of the vector (i.e. human rights), or at least in one element of the vector while no other element deteriorates (or any right is violated). Because all human rights are inviolable and none is superior to another, the improvement of any one right cannot be set off against the deterioration of another. Thus, the requirement for improving the realization of the right to development is the promotion or improvement in the realization of at least some human rights, whether civil, political, economic, social or cultural, while no other deteriorates or is violated.

A. Value added

5. The value addition of understanding the right to development as the right to a process can first be explained in terms of the evolution of thinking about development. In earlier years, the basis of development strategies was maximizing per capita GNP, as that would allow the fulfilment of all other objectives of social and human development. This can be best explained by quoting the Nobel Laureate W.A. Lewis, who noted that the growth of output per head "gives man greater control over his environment and thereby increases his freedom".[4] Concerns were expressed that individuals might not automatically increase their "freedoms" unless specific policies were adopted to achieve those freedoms. However, social and human development were regarded mostly as the derived objectives of development, and almost always as functions of economic growth. Equity was seldom a central concern of these early development policies. For most countries the impact of equity concerns on the nature of development policies was confined to progressive taxation or some supplementary measures promoted by international organizations, (e.g., the Minimum Needs Programmes), which could be added to the usual policies of accelerating economic growth.

6. Supplementary policies extending social and human development were often dovetailed with the policies for maximizing GNP. It was recognized that economic growth was not always sufficient, even if necessary, and it was this recognition which led to the paradigmic shift in development thinking termed the human development approach. According to this approach, human development was defined as the expansion of capabilities and freedoms of individuals. Economic growth was neither a necessary nor a sufficient condition for adopting specific measures for human development, although it would be extremely helpful for implementing those measures, and especially for sustaining them over any period. Policies had to be designed taking into consideration specific institutional constraints, social arrangements and resource constraints. Economic growth would relax the resource constraints, but it would have to be linked with public action and special policies to bring about changes in social arrangements and institutional frameworks. Thus the human development approach expanded the scope and the content of the traditional growth-focused thinking about development.

7. The human rights approach to development added a further dimension to development thinking. While the human development approach aims at realizing individuals' freedoms by making enhancement of their capabilities the goal of development policy, the human rights approach focuses on claims that individuals have on the conduct of the State and other agents to secure their capabilities and freedoms.[5] As the *Human Development Report 2000* puts it, "human development thinking focuses on the outcomes of various kinds of social arrangements and many of the tools of that approach measure the outcomes of social arrangements in a way that is not sensitive to how these outcomes were brought about".[6] Human rights thinking, on the

other hand, is primarily concerned with "how" these outcomes are realized, whether the State parties or the other duty holders have fulfilled their obligations and whether the procedures followed are consistent with the rights-based approach to development.

8. The right to development essentially integrates the human development approach into the human rights-based approach to development. It goes beyond accepting the goals of development in terms of human development and assessing the different forms of social arrangement conducive to those outcomes in terms of these goals of development. It converts those goals into rights of individuals and identifies the responsibility of all the duty holders, in accordance with human rights standards. It aims at the constant improvement of the well-being of the entire population on the basis of their active, free and meaningful participation and the fair distribution of benefits resulting therefrom. The concept of well-being here is broader than human development as it incorporates social, political and cultural process in the economic process of realizing rights and freedoms. In the *Human Development Reports*, concerns about civil and political rights and democratic freedoms have been discussed as they often are very important in schemes for enhancing the capabilities of the poor and the vulnerable segments of society. But they sit rather peripherally on these schemes, which would be better executed if there were more democracy or more enjoyment of civil and political rights, although it is not suggested that the schemes would be deemed failures if these rights and freedoms were violated. Conversely under the right to development approach, fulfilling civil and political rights would be as important as fulfilling economic and social rights, not just in their instrumental roles but also in their substantive constitutive role. A violation of any right would be tantamount to a failure to realize the right to development.

9. This approach based on the assumption that development is a human right broadens the human development approach, by making all the human development goals for the provision of the corresponding goods and services, rights that belong to individuals. There is a further value addition where these rights are integrated into the right to development as a process. It is not merely the realization of those rights individually, but the realization of them together in a manner that takes into account their effects on each other, both at a particular time and over a period of time, in the context of a framework of growth or a development programme, that facilitates the realization of the rights. An improvement in the realization of the right to development in that programme implies that the realization of some rights has improved while no other right is violated or has deteriorated.[7]

B. A development programme to realize the right to development

10. If the right to development is seen as an integrated process of development of all human rights, this allows growth of resources, such as GDP and technology, to be included as an integral element in the programme to realize the vector of rights that constitute the right to development. In the human development literature it is sometimes suggested that human development does not necessarily follow from the growth of GDP and other resources. As noted in paragraph 14 of the third report, "That does not mean, however, that it is possible to achieve human development only by following the rights-based approach to development and ignoring policies for economic growth. In other words, the value added of the concept of the right to development is not just that the realization of each right must be seen and planned as dependent on all other rights, but also that the growth of resources (including GDP, technology and

institutions) must be planned and implemented as part of the right to development. Like the rights to health, education, etc. the growth dimension of the right to development is both an objective and a means. It is an objective because it results in higher per capita consumption and higher living standards; it is instrumental in that it allows for the fulfilment of other development objectives and human rights."

11. To be recognized as an element of the programme for securing the human right to development, growth of resources must be realized in the manner in which all human rights are to be realized, that is, following the so-called rights-based approach, ensuring in particular equity or the reduction of disparities. That would imply a change in the structure of production and distribution in the economy to ensure growth with equity. It would entail a programme of development and investment that may require substantial international cooperation and not rely on market. Indeed, once the right to development is seen in the context of a development programme aiming at a sustained, equitable growth of resources, it becomes clear that national action and international cooperation must reinforce each other in order to realize rights in a manner that goes beyond the measures for realizing individual rights.

12. An example of a programme that will have universal acceptance under the right to development would be one aimed at the rapid reduction of poverty. A right to development approach to the reduction of poverty will be different from a simple trickle-down effect of increased growth of GDP. As considerations of equity and justice are primary determinants of the right to development, the whole structure of growth will have to be determined and reoriented by them. For example, if poverty has to be reduced and if the poor have to be empowered, such reduction in poverty has to be sustained and the poor must be free from vulnerability of exposure to sharp fluctuations in their income. That would require a development policy that focused on a change in the structure of production and income generation, with the poorest regions growing faster, with increased employment of the vulnerable and marginalized groups and with a social protection system that guarantees a minimum level of income for all concerned. That would also call for programmes that remove capability poverty in addition to income poverty through the expansion of education and training, health and nutrition and other infrastructure programmes that develop and help the poorer regions and sections of the population.

13. The aim of policy should be to advance all this with the minimum of impact on other objectives of development, such as the overall growth of output. But if there is a trade-off, such that the growth will be less than the feasible maximum, it will have to be accepted in order to satisfy the concerns of equity. If this development process has to be participatory, the decisions will have to be taken with the full involvement of the beneficiaries, keeping in mind that if this results in delays, these delays should be minimized. If a group of destitute or deprived people has to have a minimum standard of well-being, a simple transfer of income through doles or subsidies may not be the right policy. They may have to be provided with the opportunity to work or to be self-employed, which may require generating activities that a simple reliance on market processes may not be able to ensure.[8]

14. The concept of the right to development as a right to a process of development adds value to the constituent individual rights by increasing its acceptability in terms of the traditional thinking about the validity of human rights, which would depend upon the matching of rights

with responsibilities. This is because the process can be identified with a programme of policies assigning precise roles to all the agents responsible for its implementation in phases, over a period of time. Looking at the right to development as a composite right lends it legitimacy.

15. The conceptual framework of the rights/duty relationship has been briefly discussed in the second report.[9] The fulfilment of all human rights is associated with both perfect and imperfect obligations. Civil and political rights are usually associated with perfect obligations, and individuals are viewed as possessing rights that constrain State behaviour. Further, it is argued that precise obligations can be identified and imposed on the State for protecting or preventing violation of those rights. But in practice, fulfilment of those rights would entail not just protecting but also promoting them, which would entail obligations for a number of other parties besides the State, with differing degrees of specificity. In the case of economic, social and cultural rights, the duty to promote these rights is viewed as the more important part of the set of obligations, and those obligations tend to be imperfect. A programme for realizing the right to development helps to improve the identification and specification of duties for different agents, thus increasing the likelihood of their realization. Further, it builds on the interdependence both at a point in time and over a period of time of the rights and the measures for realizing these rights. The obligations appropriately specified based on that interdependence would then make possible the fulfilment over time and in a sustainable manner of these rights, which by their nature have to be realized through progressive improvement.

16. The outcome of that process of development is in itself a human right which entails obligations. However, the right to that process is different from the right to the outcome. It is a programme or plan executed over time maintaining consistency and sustainability, with phased realization of the targets, and that programme is expected, with a high probability, to lead to the realization of all those outcomes. This is what Sen describes as a "metaright". A metaright to something x can be defined as the right to have policies p (x) that genuinely pursue the objective of making the right to x realizable.[10] Even if the right to x remains unfulfilled or immediately unrealizable, the metaright to x, p (x), can be a fully valid right if all the obligations associated with p (x) can be clearly specified. The programme of actions and measures that is associated with the right to development has to be necessarily designed in a way that the obligations of all the different agents, the State authorities, the local governments, the multinational companies, the multilateral agencies and the international community have to be clearly specified. It thus becomes a complete right; having all the justification of a human right with fully identified duties and obligations.

II. NATIONAL ACTIONS

17. Implementing the right to development will require both national and international actions. The independent expert's first three reports built on earlier reports of the various working groups of the Commission on Human Rights and examined the range of the actions necessary for such implementation. In the following paragraphs these will be discussed in greater detail so that they can serve as guidelines for designing a practical programme for implementing the right to development.

18. The primary responsibility for implementing the right to development belongs to the nation-State. In order to fulfil these obligations all levels of government and public sector organizations must coordinate their actions. This coordination should be not only among themselves, but also with other parties within the State including NGOs, individuals and other national institutions, as well as other States and international organizations. Such coordination, or at least the existence of a functioning coordination mechanism, would greatly help, and may be essential for effective implementation of the right to development. But the absence of such coordination can not justify the non-fulfilment of an obligation. So long as the right is recognized as a human right, the obligation to deliver the right is absolute for all parties irrespective of whether others are fulfilling their obligations. For the State parties, such obligations "trump" all other duties and activities and have first priority in determining the allocation of financial, material and institutional recourses.

19. National actions should be aimed at the implementation of each of the constituent rights of the right to development, individually as well as in combination with each other, and as a part of the development process. That process would consist of a development programme with a set of policies sequentially implemented and a phased realization of the different rights and the corresponding freedoms. As noted above, the process itself as well as the outcomes of the process are all claimed as human rights and have to be realized in accordance with human rights standards and norms of behaviour of the agents who are the duty-bearers and the beneficiaries who are the right holders.

20. It may be useful to elaborate on this point a bit further. A right to development approach in a development programme will be concerned with the most efficient provision of goods and services and changes in the institutions and social arrangements to realize a set of targeted objectives as human rights, identified as expansion of capabilities and freedoms. It will be concerned with the increase of both the availability of and the access to those goods and services. Availability is related to the growth of the economy and therefore to the policies that ensure sustainable growth of material and human resources, with macroeconomic stability and efficient allocation of those resources. Access is related to the distribution of resources and how the benefits of the process reach everybody without discrimination, especially the most vulnerable and marginalized sections of society. In short, such a development programme would aim at economic growth that realizes human rights and is carried out in accordance with human rights standards.

21. In his earlier reports the independent expert suggested implementing a programme aimed at the eradication of poverty. This would include goals such as reducing the level of income-poverty by half by the year 2015 and removing three major aspects of capability poverty, i.e. hunger, absence of primary health care and lack of basic education, by a universal fulfilment of the right to food, the right to primary health and the right to basic education by that year. These specific targets were chosen because the rights have to be fulfilled in a step-by-step manner through progressive realization, as all the rights and corresponding freedoms cannot be realized immediately and simultaneously; also because there would be general agreement about the desirability of those targets. The countries concerned may choose to target other right(s) first, provided they follow appropriate participatory consensual procedures to decide on which

rights to target. No matter which rights are chosen it is important that the availability of the corresponding goods and services is expanded in a manner that satisfies human rights principles and follows the rights-based approach to development.

22. In the human rights literature, such a rights-based approach is characterized by adherence to well-defined principles, such as participation, accountability, transparency, equality, non-discrimination, universality and indivisibility. From a human rights perspective the objectives of development are to be regarded as entitlements, or as rights that can be legitimately claimed by individuals, as right holders, against corresponding duty holders, such as the State and the international community, which may have specified obligations to enable those rights to be enjoyed. The objectives may be viewed as elements of human development, but they have to be realized as human rights, with the accountability and, where possible, the culpability for not realizing those rights clearly established, leading to the adoption of remedial measures.

23. As human rights, all of them must conform to the principles of universality and indivisibility.[11] Universality implies that every individual is endowed with human rights, by virtue of being human. This principle has sometimes been used misleadingly to exclude certain group rights or minority rights or gender rights or community rights from the purview of human rights, as their enjoyment is restricted to the members of the respective groups. But if such a group right is accepted as a human right through proper procedures whose legitimacy and coherence are fully established, it should be treated fully as a universal right, to be enjoyed by all individuals belonging to that group without any discrimination among them, irrespective of their cultural background or citizenship.

24. Two implications which flow from this universality must be taken into account in implementing such human rights: (a) the obligations related to such rights are also universal, to be implemented to the best of their possibility by all agents who are in a position to help, whether they are the State authorities and others belonging to the same country, or other States and international organizations; and (b) they should receive the highest priority in the use of resources and capacities of all these agents in fulfilling those obligations, "trumping" all other demands on them.

25. The principle of indivisibility is often associated with the principle of interdependence, though they are not the same. Two rights are indivisible if one cannot be enjoyed if the other is violated. Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other. There is an improvement in the right to development only if at least one of the constituent rights improves and no other right deteriorates or is violated, which means the right to development conforms to the principle of the indivisibility of human rights. Similarly, the condition that each right (or the indicator representing the level of enjoyment of a right) is a function of all other rights or indicators representing them conforms to the principle of the interdependence of human rights. In the design of a practical programme to realize the right to development, these principles qualify the way the individual rights are to be realized. If a policy for realizing a right results in the violation of another right, whether the right is civil, political, economic, social or cultural, that policy cannot be included in such a programme. If a policy for realizing a particular right improves the enjoyment of other rights, that policy will be more acceptable than another which does not take into account such interdependence. Providing a midday meal to children attending schools improves the rate of school attendance and therefore

the right to education. In addition, it enhances the level of nutrition of the children and, therefore, the right to health, as well as the right to food. Such a programme will be more acceptable under the right to development approach than a similar-costing programme that focuses on opening more schools. Opening more schools should make it possible for more children to attend school and thus secure their right to education, but would not have the added value of improving other rights that a midday meal programme would have.

26. Two other principles which are fundamental to human rights thinking and the implementation of human rights are equality and non-discrimination. Indeed, the principle of equality derives from the principle of the equality of all human beings. However, there has been much debate about the content of equality. The human rights instruments talk about equality in law and equality in rights. In that sense, equality would mean that if anyone has a right x, then everyone has that right x and that the law prohibits any discrimination in the enjoyment of rights by anybody on any ground. But all these instruments stopped short of providing for equality in income or the level or amount of benefits accruing from the exercise of the rights. When questions of sharing those benefits were discussed, the human rights concern was expressed in terms of "fairness" and of being "equitable and just", but not of absolute equality.

27. That does not mean that human rights laws and practice would ignore issues connected to inequality of income. When human rights, especially economic, social and cultural rights, involve the availability of and access to goods and services necessary to fulfil those rights for all individuals, then equality in rights implies equality of access to the availability of these goods and services. Equality in that sense was often referred to as equality of opportunity, or equality of capabilities, and both these concepts would have income as a major determinant. They may not call for absolute equality of income, but any increased inequality of income would be incompatible with a process of increasing equality of opportunity or capabilities.

28. The principle of equality is essential to any programme aimed at implementing human rights, such as the right to development. It can be reflected in policies aimed at ensuring the equitable distribution of benefits and, following the Rawlsian principles of justice, it would target the most vulnerable and marginalized segments of society. This would be achieved through specific policies to eradicate massive poverty, including policies to increase purchasing power, improve access to goods and services, remove income and capability poverty and fulfil the rights to food, health and education of those segments of society. But most importantly all these policies and measures have to be implemented in a development framework that reduces income disparities or at a minimum does not allow any increase in inequality.

29. The principle of non-discrimination is also fundamental to human rights thinking and therefore to the process of implementation of a human right. In designing and implementing all policies and practices for realizing the right to development there cannot be any discrimination on the grounds of race, colour, sex, language, political or other opinion, religion, national or social origin, property, birth or other status, not only between the beneficiaries but also between the agents, even if they are not equally involved, remunerated or motivated. The principle of equality implies non-discrimination, but not vice versa. Even if the benefits are not equally shared and everybody does not have equal incentives or responsibilities regarding the execution of a project, there cannot be any discrimination between the agents, the stakeholders and the beneficiaries (the right holders) on any ground.

30. This principle is parallel to another human rights principle, the principle of participation, according to which all beneficiaries and agents involved in the implementation of the right to development are entitled to participate in, contribute to and enjoy the results of the process of development. In practice, the principle of participation is concerned with access to decision-making and the exercise of power in the execution of projects which lead up to the programme for development. That, in effect, means that citizens need to be empowered and have ownership over the programme. However, there is no unique model of participation, as the nature of and the relationship between the beneficiaries and agents would vary from project to project, within a development programme. In any kind of interaction between them, their relative power and status would influence the effectiveness of their participation. Quite often, formal, nominal participation can be misleadingly taken as full participation and empowerment of the actors. That would frustrate the intent of the human rights approach to participation. It may therefore be necessary to focus on the creation of a mechanism to monitor the process and adjudicate on the grievances and complaints about the denial of effective participation by everybody concerned. If the local authorities or grass-roots agencies function truly democratically, they can be accorded the role of adjudicator, provided there is appropriate oversight of their activities. Otherwise, for each project special provisions have to be drawn up and implemented in order to ensure such participation.

31. Accountability and transparency are the two other principles associated with the human rights framework and the implementation of human rights and therefore with the right to development. They are also necessary for any effective process of participation. As has been noted earlier, human rights involve specification of obligations for the different duty-holders who would be accountable for carrying out those obligations. Depending upon how precisely the accountability can be fixed, it may be possible to establish culpability for the non-fulfilment of a right and apply appropriate corrective measures. But even if, in a world of imperfect obligations, such culpability cannot be clearly established, as the failure or non-fulfilment of the corresponding right may not be legally attributable to particular agents, the identification of the duty-holders and their respective obligations would be an essential part of any development programmes. In order to make that possible, the programmes must be designed in a transparent manner, bringing out openly all the interrelations and linkages between different actions and actors. In short, accountability presupposes transparency in all the transactions and interconnections in the process of development, implemented as a human right, and both of them are necessary to ensure effective participation of all the actors in that process.

32. As in the process of participation, ensuring accountability and transparency in the implementation of a human right will require the establishment of appropriate adjudicating and monitoring mechanisms. This can be achieved either through a formal, legal process or through some other important and independent process of enforcing remedies or introducing counteractive adjusting measures.

A. The role of NGOs

33. The NGOs have a major role to play in applying the principles of accountability, transparency and participation in implementing the right to development. In paragraph 25 of his third report the independent expert notes that in his "approach to the implementation of the right to development, the obligation to facilitate the right-holders realizing their claims falls not only

on States and other institutions nationally or internationally but also on the civil society and on anybody in the civil society in a position to help. NGOs are one constituent of civil society that can and has often played a very effective role in the implementation of human rights. Indeed, when the rights are to be realized in a participatory manner, with participation of the beneficiaries in the decision-making and benefit-sharing, with accountability and transparency and in a widely decentralized process, NGOs may have to play an even more crucial role in monitoring the programmes and delivering the services and may often replace the existing bureaucratic channels of administration. They may also have to play an advocacy role as well as engaging in grass-roots mobilization and organizing of beneficiaries to participate in decision-making. Furthermore, the role of NGOs would not be limited to national-level actions. The concept of international civil society as a third force is increasingly gaining ground and NGOs may be very effective in not only an international advocacy role but also as facilitators of the delivery of international services. However, the issues of funding, the identities and the commitments of NGOs are quite complex. All the functions of NGOs and of international civil society need to be reviewed carefully".

B. Obligations of the State

34. As has been noted above, the primary obligations for realizing a human right belong to the nation-States of which the individual right-holders are citizens. In the human rights literature, these obligations of the State have come to be identified with the obligations to respect, protect and fulfil.[12] The State has the obligation to respect in the sense of abstaining from carrying out or tolerating any violation of the right in question by agents of the State. The obligation to protect obliges the State to prevent the violation of the right in question by other individuals and non-State actors. The obligation to fulfil enjoins upon the State the duty to provide the resources and services necessary for individuals to enjoy their rights. In effect, the obligation to fulfil implies the obligation to facilitate, provide and promote.

35. Steiner and Alston have extended this list to five obligations: "respect the rights of others", "create institutional machinery essential to realization of rights", "protect rights/prevent violations", "provide goods and services to satisfy rights", and "promote rights", through advocacy, education, etc.[13] Stephen Marks has categorized these obligations as perfect and imperfect obligations. Perfect obligations can be enforced through judicial process, where "accountability takes the form of enforceable remedies", such as the obligation to respect, preventing the State agents "from denying a right and punishing them for acts of commission and omission", and the obligation to ensure or protect, "preventing others from violating a right and punishing them for prohibited acts and ensuring through regulatory mechanisms that domestic and multinational corporations do not engage in practices that contribute to the deprivation of rights". Imperfect obligations are "general commitments to pursue a certain policy or achieve certain results which are typically not justiciable, that is, immediate individual remedies through the courts are not normally provided, where the State falls short of its responsibilities with respect to these obligations, although they are still legal obligations". The State is required to take effective steps in the direction of progressive realization of the right. In this category falls the State's responsibility to promote and facilitate through education, information, training and research and to create an enabling environment, as well as the State's obligation to fulfil or provide, allocating resources and supplying goods and services, "when the normal functioning of the market and other institutions fail".

C. Designing and executing a development programme

36. As the independent expert understands the right to development to be the right to a particular process of development, acceptance of this right would impose all of these obligations on the State because it entails the realization of all human rights. As all of the rights have to be realized together, this requires the design and implementation of a development programme, with policies and measures that promote, protect, facilitate, fulfil and provide for human rights.

37. There are two basic requirements for carrying out such a programme. First, it is necessary to identify appropriate indicators and benchmarks to monitor the status of realization of each of the rights, as well as a mechanism for evaluating the interaction among the indicators. Indicators and benchmarks for specific rights have to represent not only the quantitative advances in providing a particular service to a population but also the qualitative manner in which the service is provided. For example, an indicator for the right to food should not only reflect the access to or the availability of food, but also the way that food is made available, with regard to equity, non-discrimination and other human rights. Several attempts have been made at developing such indicators and it will be necessary to develop agreed procedures that can be adopted to construct such indicators. It may not be necessary, however, to build up an overall indicator for the right to development. This is because to convert a vector comprising a number of distinct elements into an index would require a process of averaging or weighting the various elements, which would be open to fundamental objections. The vector approach would make it possible to establish whether there has been an improvement in the realization of the right to development as a result of the policies pursued. It would not, however, allow comparisons to be made between the achievements of two or more countries, or even within the same country over time. The only way to do this is to build a consensus through open public discussions about the relative importance of the different levels of achievement.

38. This, of course, would not prevent the formulation of a programme for development that takes into account the interlinkages between the objectives of realizing the various rights, as well as expansion of resources such as GDP, technology and institutions. The difference between a rights-based approach to development programmes and approaches that emphasize growth of GDP, or a balance of payments surplus to meet debt liabilities, or a stabilization programme that minimizes the rate of inflation is that the rights-based approach imposes additional constraints on the development process, such as maintaining transparency, accountability, equity and non-discrimination in all the programmes. In addition, as mentioned earlier, the programme must ensure overall development with equity, or transformation of the structure of production which reduces interregional and interpersonal disparities and inequity.

39. The right to development is also very much a matter of modernization, as well as of technological and institutional transformation, which relaxes the constraints referred to above over time. It is dependent on increasing resources over time and making the most efficient use of the existing resources through proper fiscal, monetary, trade and competitive market practices, and through expanding the opportunities for trade. Achieving the right to development requires the same fiscal and monetary discipline, macroeconomic balance and competitive markets as any

other form of prudent economic management. The basic difference is that prudent management in furtherance of achieving the right to development is expected to bring about a more equitable outcome of the economic activities that make possible an improved realization of all the components of that right.

40. Finally, one has to recognize while implementing the right to development another implication of the fact that all the rights cannot be realized at the same time. We cannot allow violation of any right because we cannot trade off the improvement of one right against the violation of another right as we have no way to compare the rights or order them in accordance with any notion of priority. However, if there is a serious resource constraint or if there is some insurmountable technical consideration, there may be situations when realizing a particular goal (or improvement of a right) may require giving up some other desired goals (not achieving full realization of some rights). This would be obvious if the rights are represented by some indicators reflecting access to and the availability of some goods and services calling for the use of resources. There may be situations when the right of some individual or small groups may be violated as a result of measures adopted to benefit a larger number of people, especially poor people. An example of such a situation would be the construction of a dam which is technologically sound. By improving irrigation and providing power it could benefit a large number of people realize the right to development of many poor people. But it may require uprooting and relocating some people and violate their rights. Obviously, there would be no problem if there were measures by which the needs of that larger number of people, including the poor, could be met without violating the rights of any individual or small groups. This is, however, different from the legal issue of derogations or limitations on the exercise of rights, which respectively allow curbing of some rights in a public emergency, in the interest of public order and the general welfare[14] - a principle which has been used wrongly by some writers to ignore the violations of such rights. The issues of such violations are related to the technology of the project, not to the legal technicalities of limitation provisions and cannot be condoned without appropriate countermeasures.

41. The problems of such violations in a right to development programme have to be dealt with in terms of what may be called "compensated violations". If a development project, such as constructing a dam, leads to the forced relocation of some people, that forced relocation constitutes a violation of their rights. If the project provides facilities that benefit many more people, it can be justified in the usual economic programmes if the total benefits exceed the cost, that is if the net benefits are positive, even if the beneficiaries do not actually compensate the losers. But such logic only holds if benefits and costs are measured in terms of market or shadow prices. In human rights theory, that cannot be done because the benefits and costs in rights of different individuals cannot be aggregated. In that case, compensation has to be paid, in whatever form, in order that the losers or those affected can accept the "nominal violation" of their rights and consent to the relocation. It is nominal because after compensation there should be no "real" violation, so that those affected believe they have not actually lost and are at least "indifferent" between the pre-violation State and the post violations compensation situation. So, such projects/policies would be justifiable if those affected no longer feel violated once compensated.[15]

III. INTERNATIONAL COOPERATION

42. The Charter of the United Nations recognized the obligation of international cooperation, by virtue of which the international community of States and multinational organizations are expected to cooperate with nation-States to enable them to fulfil the human rights of all individuals. The International Covenants, the Declaration on the Right to Development and other international human rights instruments reaffirmed this obligation. The 1993 Vienna Declaration and Programme of Action,[16] which formally acknowledged the right to development as a human right, also called for such cooperation as an obligation of all States. Once the process of realizing the right to development is viewed as a method of implementing and designing a country's development programme, the importance of international cooperation becomes even more evident. In today's globalizing world, a State cannot act in isolation, that is, without considering the effects of its policies on other countries, or without taking into account the impact of the behaviour of other countries on its own policies. The impact of the policies and practices of the developed countries on those of the developing countries, and vice versa, was the basis on which the concept of international cooperation was built. Just as these impacts are reciprocal, so too are the obligations to respond to them, leading to international cooperation.

43. When human rights are to be realized as a part of a country's development programme, all the resource, technological and institutional constraints can be seen as dependent upon the extent and nature of international cooperation. The international community, which could supply foreign savings and investments, technology, access to markets and institutional support, can facilitate the realization of the rights. But it should be obvious that such international cooperation is not to be confined only to the supply of foreign savings and foreign investment, or the transfer of resources. Such transfer of resources is, of course, necessary. The poor countries are short of domestic resources, which need to be supplemented by flows of foreign savings. Any discourse on the right to development cannot, therefore, avoid reminding the international community of its pledge to reach a target of devoting 0.7 per cent of GNP to foreign aid, and that only a handful of countries have come anywhere near meeting that target. However, in the context of fulfilling the right to development, in addition to the transfer of resources, several other factors would form part of the international community's obligations, including: international cooperation for supplying technology; providing market access; adjusting the rules of operation of the existing trading and financial institutions and intellectual property protection; and creating new international mechanisms to meet the specific requirements of the developing countries.

44. Such international cooperation would usually have two, though not mutually exclusive, dimensions. First, cooperation measures should be conceived and executed internationally in a multilateral process in which all developed countries, multilateral agencies and international institutions could participate by providing facilities accessible to all qualifying developing countries. Secondly, bilateral facilities or country-specific arrangements would deal with problems requiring measures adapted to particular contexts. It would be necessary to re-examine, from this point of view, both the multilateral and the bilateral facilities dealing with the debt problems of developing countries. Such a review should include structural adjustment, concessional financing, the operations of the world trade organizations, the policies of industrialized countries regarding market access and the restructuring of the international financial system.

45. These steps could radically transform international economic relations between the developed and developing countries, on the basis of equity and partnership. One of the principal motivations of the human rights movement leading up to the formulation of the right to development as a human right was establishing equity and empowerment in international economic transactions between developed and developing countries. Much of the logic of the North-South conflict that was behind the demand for a New International Economic Order in the 1970s has now lost its relevance. However, the rationale for equitable treatment and participation in decision-making and access to the benefits of the process remains as strong today. The human rights approach to the realization of the right to development provides scope for building up a cooperative relationship between the developed and developing countries on the basis of partnership rather than the confrontation of earlier years.

A. Human rights and development cooperation

46. Although the major industrial countries have had development cooperation policies, especially development assistance programmes, since the 1950s, they have been reluctant, till very recently, to link them to the human rights standards. One of the main reasons was that human rights were seen mainly as civil and political rights, and development was associated with economic growth and raising per capita GDP through technocratic policies. Invoking human rights concerns was not favoured either by the recipient developing countries or the donor industrial countries. The first group thought it would result in unnecessary interference in their political sovereignty. The latter felt:

(a) That it would unnecessarily alienate the recipient countries;

(b) That some of the recipient countries, which were known perpetrators of human rights violations, actually received the largest amounts of development assistance because they were allies of the major donor countries and such a policy would be difficult to justify if human rights standards were applied; and

(c) That development policies should be kept separate from the issues of human rights (which at best should be used to assess the compatibility of those policies and practices with human rights norms, but could not be the basis of development models. That would be too close to accepting the legitimacy of economic, social and cultural rights, which most of the major donors were not fully prepared to do).[17]

47. Gradually, the situation changed, in part thanks to increasing pressure from the human rights movements in the industrial countries, which pushed for human rights concerns to be reflected in development assistance policy. That led to the United States, under President Carter, invoking human rights violations as the reason for stopping assistance to specific countries, and to the European countries openly recognizing economic, social and cultural rights and pressing for their fulfilment. Indeed, as early as 1975 the development policy of the Government of the Netherlands recognized the full range of human rights. Further, Netherlands development assistance was aimed at improving the lot of the poor and included the idea of developing modalities to allow recipient countries to have the right to a say in their own affairs.[18] Other European countries followed policies aimed at creating conditions for realizing human rights and pursued measures to promote specific economic, social and cultural rights.

48. For a long time, however, the human rights approach to development cooperation focused on assistance for specific projects and programmes "to address areas of chronic neglect, such as infant and child health and nutrition, education of the girl child, adult illiteracy, economic empowerment of woman etc.", as Clarence Dias put it.[19] The case was made for extending development assistance policies to, inter alia, help build and strengthen the capacity of institutions like the judiciary, national human rights commissions and NGOs, as well as to redress adverse human rights impacts on particular groups resulting from development projects. However, there was a reluctance to link general policies, even such as meeting basic needs or eliminating absolute poverty, to human rights. It was believed that such a linkage might have been construed as affecting the political neutrality of the multilateral agencies, such as the World Bank or the IMF, and so the preference was to use specific projects to promote specified human rights.

49. More recently, development cooperation policies started integrating a human rights approach into a country's development programme. This approach combines a set of projects with policies and social arrangements, using their interdependence and common overall objectives. These have been spelt out in detail in recent documents explaining the development cooperation policies of the Development Assistance Committee (DAC) of OECD and the bilateral donor agencies, such as the 1996 DAC study, *Shaping the 21st Century: The Contribution of Development Co-operation*; the 1997 study of the Swedish International Development Authority (SIDA), *Development Cooperation in the 21st Century*; the 1997 White Paper by the United Kingdom Secretary of State for International Development, *Eliminating World Poverty: A Challenge for the 21st Century*. Most of them have poverty eradication as the main objective of development and bring out the importance of applying the human rights approach, in terms of partnership and empowerment. Indeed, the earlier emphasis on poverty-reduction projects (ensuring increased purchasing power for the poor or broader networks of concessional public distribution systems) has been gradually shifting to an approach based on programmes for overall development with an accelerated growth in GDP and employment, which are considered to be essential for a sustainable reduction of poverty.

50. However, many of these programmes adopted, as Philip Alston would describe it, an instrumentalist approach to human rights, rather than giving human rights, "a prior value commitment". Fulfilling human rights was important as it would be conducive to the realization of specific developmental goals. Human rights policies as reflected in concerns about good governance, or ensuring transparency, accountability and non-discrimination and partnership leading to empowerment were regarded as important, if not essential, for the implementation of poverty-eradication programmes. But the legal standards of achievement attaching to human rights were not considered policy objectives. The 1997 World Bank report, *Assessing Aid*, very clearly spelt out the importance of participation and empowerment and the difficulties of enforcing conditionality in their absence, as well as the requirements of good governance for the effective use of foreign aid. But there was hardly any call for fulfilling human rights in these assessments.

51. The position of the Word Bank has changed since then and the language of human rights now appears more often in its policy objectives. Nevertheless, the tendency to avoid human rights standards remains, although the elements of what was described above as the human rights approach to development are now increasingly incorporated in its programmes. In its

Comprehensive Development Framework which followed the launching of the 1998 "Partnership for Development: Proposed Actions for the World Bank" the Bank took a holistic approach to development, formulating a long-term development framework with clearly defined priorities, balancing structural, physical and human requirements, based on participation, accountability and country ownership. In its *World Development Report 2000/2001*, the Bank discussed the problems of attacking poverty in terms of opportunity, empowerment and human security, all of which are foundations of the human rights approach. It is just a short step from that to a fully developed approach to the right to development, as elaborated by the independent expert. The same is true of the Poverty Reduction Strategy Papers (PRSPs) that IMF and the World Bank promote together, or the policies enunciated in initiatives for the Highly Indebted Poor Countries (HIPC), which have all the ingredients of the human rights approach to development, without fully embracing the human rights standards incorporated in the international human rights instruments.

52. These developments have been accompanied by most of the major industrial countries taking a position on development cooperation in terms of realizing human rights, and the grounds are now prepared for adopting the approach to implement the right to development spelt out in the independent expert's reports. The difference in approach between the IMF/World Bank's Poverty Reduction Strategy and the Comprehensive Development Framework (CDF), as well as the approaches of the major bilateral donors, and the implementation of the right to development as a human right, is the explicit recognition of the obligations of the stakeholders, including those of the international community. There will hardly be any disagreement about accepting the goals of human and social development, within the human rights framework, as guiding development policies. But accepting those goals as rights or entitlements of all individuals in developing countries would entail accepting the obligations of all parties to carry out measures to make possible the realization of these rights. Even here, there would now be a general consensus about specifying the obligations of State authorities, as can be seen from the manner in which such obligations are fixed, in accordance with the human rights standards, in PRSPs, HIPC initiatives, CDF and other development programmes. This means they would be consistent with partnership and empowerment, transparency, accountability and non-discrimination. Regarding the realization of the right to development as a human right, they may need to be somewhat reformulated to establish culpability, specify the monitoring mechanism and enforce the commitments of the State authorities at different levels. But the building blocks for designing programmes and the specification of the responsibilities in adopting the human rights approach are already in place, especially with regard to programmes of national action.

53. However, mechanisms for establishing the international obligations and specifying the duties of the different agencies of the international community are still lacking. One lesson that has been learnt from the experience of international cooperation is that one-sided conditionality imposed on a party, even if in principle it is beneficial for the party, seldom works and is honoured more often in the breach than in the observance. The donor community has therefore moved towards ensuring partnership with and empowerment of the recipient countries, making them owners of the programmes that entail those conditionalities. However, if those conditionalities are not matched by the specification of obligations belonging to the donor countries and institutions, and the international community in general, the exercise falls short of the requirements of the human rights approach.

54. So, the programmes implementing the right to development have to be designed in such a manner that the conditionalities set as the developing countries' obligations are matched by reciprocal conditionalities, in terms of obligations that the international community will have to carry out. The programmes then not only fit into the human rights approach based on partnership and equity, but also improves the likelihood of those obligations being fulfilled and the programme itself being realized. To achieve this requires a clear specification of the obligations of the different parties, including the recipient State and its national authorities, as well as the international community, the donor States, international agencies and multinational companies, and a clear linkage to the progressive realization of the different indicators of the rights. To this has to be added mechanisms to decide on the burden-sharing of the obligations between the different agencies, and a mechanism to monitor, if not arbitrate and adjudicate on, the disputes that may arise and to recommend and enforce corrective measures. A successful programme is thus as much dependent upon the appropriate design of the programme, the detailed specification of responsibilities and a fixing of accountabilities, as on recognizing the mutuality of the obligations and the reciprocity of the conditionalities.

55. There is no unique model for implementing the right to development, and whatever model is chosen has to be selected through open international deliberation and agreement. In order to facilitate such deliberation, the independent expert proposed the adoption of development compacts in his first three reports. His ideas were derived from the original proposal of the Norwegian Minister Stoltenberg and further developed by others, including himself in the late 1980s, following the pioneering use of the Support Group mechanism by the IMF in resolving the problems of the arrears of defaulting countries.[20] This model is perfectly consistent with the PRSP and the HIPC strategies of the IMF and the World Bank and the principles enunciated by the approach to development assistance of the different members of the Development Assistance Committee (DAC) of OECD. In effect, it puts those strategies squarely in a human rights framework, basing them on not only the obligations of the State authorities but also of the international community.

B. Development compacts

56. The following paragraphs describe in a systematic manner this approach to the development compact, so as to promote discussions aimed at having the international community reach agreement on adopting a model for implementing the right to development.

57. First, the international community, after agreeing to adopt a development programme as a process of development realizing all the human rights, may choose to realize a few rights, without any deterioration in other rights, as an immediate development objective. This choice would not imply any hierarchy among the rights but should only reflect a properly built up consensus in the developing country concerned. The reason for concentrating on a few rights to begin with is dictated entirely by reasons of practicability. The independent expert suggested reducing poverty by half by 2015 and fulfilling universally the right to food, the right to primary education and the right to primary health care as objectives of the programmes for the right to development. This is not only in accordance with the principle of equity, which is the basis of

all human rights and which is satisfied by dealing with the worst form of inequity in the developing countries, namely income poverty with capability poverty, it is also consistent with the principal objectives accepted by most bilateral donors and multilateral agencies in their development cooperation programmes, as well as the targets set at the Millennium Summit.

58. Second, it would be desirable to establish a focal organization where members of the international community can meet and work with those developing countries willing to enter into development compacts. It should probably be centred at the DAC of OECD, which can effectively play the role of coordinating negotiations with the developing countries on behalf of the industrial countries.

59. Third, a developing country that is willing to implement the right to development through a development programme should write to the DAC and request a development compact. It should then design its development programme, in the manner we have discussed above, to secure the objectives already agreed upon, clearly bringing out the interdependence between the rights, the policies to be adopted nationally and internationally, the sequencing of policies and objectives, the obligations to be carried out by the different parties and the nature and extent of the support required from the international community. The developing country concerned must receive technical assistance in designing the programme, including the help of outside and independent experts, as well the expertise of World Bank and IMF staff. But every attempt must be made to ensure that the country retains ownership of the programme.

60. Fourth, once a development programme has been fully drawn up by a developing country seeking a development compact, the DAC should organize a support group for that developing country. The support group should be convened by the DAC and, in addition to the DAC, it would be composed of other major donor countries who may have specific interests in that developing country, the regional development agency, representatives of the Office of the High Commissioner for Human Rights, FAO, UNICEF, WHO and other international agencies linked to the specific rights chosen for priority attention, plus representatives of IMF, the World Bank and the appropriate regional development bank. The support group will scrutinize, review and approve the targets and policies of the programme, examine the obligations specified and identify the respective responsibilities of its members in fulfilling those obligations.

61. Fifth, those developing countries that undertake to realize the right to development through a development compact should design development programmes in consultation with civil society. They must also take the first steps towards fulfilling their own international obligations by adopting legislation to incorporate in their domestic law the rights contained in international and regional human rights treaties, which they must ratify if they have not done so already. Then they must appoint a national human rights commission and other authorities which can adjudicate on complaints of human rights violations. They should also allow NGOs to operate freely and participate at all levels of the consultation and adjudication process.

62. Sixth, a development compact should be drawn up on the basis of the development programmes that specify the obligations of both the national authorities and the international community. It should identify the sequential steps and levels of realization of the targets and rights and the reciprocal obligations, and make it clear that if the developing country takes the measures specified in the programme, the international community would take corresponding

measures to make the effective application of the developing countries' measures and the realization of the programme possible. The measures, the benchmarks and the performance criteria, that would trigger corresponding international actions would be reviewed and accepted by both the developing country and the support group. The support group, in turn, would decide, through discussion among its members, the precise burden-sharing.

63. Seventh, in the burden-sharing discussions, appropriate measures should be considered and assessed at both the multilateral and the bilateral levels. Issues relating to trade, debt, financial restructuring, intellectual property rights and creating appropriate investment environments mainly require action at the multilateral level. Issues relating to resource transfers and financial support will have to be considered at the bilateral level, with input from various donors and the international financial agencies.

64. The intent of all these exercises is to assure the developing countries that if they fulfil their part of the bargain and carried out their obligations, the programme will not be derailed because of the lack of international cooperation. In this respect, official finance or resource transfers from the industrial countries will play the most crucial role. If all the other elements of cooperation - trade and market access, debt rescheduling and financial restructuring that facilitates increased private flows, as well as technology transfer and transactions in intellectual property - are effective, a significant increase in the transfer of resources may not be necessary. But if they do not, the slack may have to be taken up by increased resource flows or development assistance.

65. It is important to note that international cooperation does not consist only of resource transfer or official development assistance. Indeed, if development programmes are carried out properly with accountability and transparency, at the grass-roots level and with the participation of beneficiaries, the increased cost-effectiveness may mean that the impact of the development assistance will be greater and thus economize on the flow of financial aid. Nevertheless, most developing countries are short of capital and their level of development does not attract substantial private investments. For most of them, official development assistance is the only way to allow domestic investment to exceed their low levels of domestic savings. Further, most of the specific human development projects in the areas of food, health, sanitation, education and major infrastructure would require substantial public investment for quite some time. This would need to be supported by official development assistance, until public revenue and savings increase as the level of development increases. In addition, the development programmes for realizing the right to development would build on policies for sustaining and accelerating where possible the rate of economic growth and on raising the rate of investment. Therefore, the inflow of foreign savings would remain a central element of the programmes. So long as these foreign savings do not flow from the international capital markets to most poor countries they will have to come from increased official development assistance.

66. So one of the major functions of the support group would be to decide on how to ensure adequate official assistance to the countries that accept and request a development compact and carry out their obligations. There might be many different methods of assessing the requirements. One method would be to calculate the additional requirements of public investment or expenditure in implementing the programme for realizing the right to development and of the targets set. This would be over and above the baseline projection that is usually

obtained by extrapolating the past flows for meeting the normal requirements. The international community may agree to share that additional requirements half-and-half with the country concerned, provided that country attempts to increase its domestic savings. In any case, this burden sharing between the developing country and the international community will have to be agreed upon in the support group deliberations and will form a part of the development compact. The developing country concerned must be sure that, if it fulfils its obligations, the financing obligations of the international community are guaranteed.

67. In order to carry out its mandate properly, the support group must have the power not only to monitor and adjudicate on the fulfilment of the obligations and conditionalities accepted by the developing countries, but also to decide on the allocation of the burden among the industrial countries. It may be able to do so on its own, or may refer to the DAC to actually enforce the decisions, of course following the usual consultations, with the participation of all, including local and international NGOs. To help the support group operate it may be necessary to create a new financing facility called the Fund for Financing Development Compacts. The operation of that fund is sketched out in the following paragraphs.

68. The fund should be administered by the DAC, with contributions in the form of callable commitments from its various members. These commitments would only be called in when a developing country entered into a development compact that required additional financing from the international community.

69. The size of the fund would have to be decided through international consultations. Following the Millennium Summit, several estimates have been made of the financial requirements for meeting its targets. The Zedillo report, a technical report of the High Level Panel on Financing for Development (2001), summarized as approximately $50 billion a year the estimates that have been made by different agencies of the amount required to halve poverty by 2015 and provide the essential elements for meeting the rights to food, to primary health and to primary education. There is no hard and fast rule for making such estimates and the only method would be to decide upon an amount following international deliberations.

70. Once the size of the fund was agreed upon, it would not be difficult to agree upon the share of the different DAC members on the basis of some agreed principles. The contributions to the fund would be in the form of commitments to begin with, which might later be called upon by the DAC on the recommendation of the support group. Thus, the negotiations would only have to address the principles that would govern the fund.

71. It is here that the old official development assistance target of at least 0.7 per cent of GNP per year for all donors, following the recommendations of the 1969 Pearson Commission and the United Nations resolution endorsed by most, though not all, donors becomes useful. The logic of that burden sharing still remains valid, although the actual share of ODA to gross national product (GNP) for most of the DAC countries on average has rarely exceeded half that target. In 1999, at $56 billion, the ODA of the 22 members of DAC represented only 0.24 per cent of their GNP. Excluding the United States, that average went up to 0.33 per cent. Five countries, Denmark, Luxembourg, the Netherlands, Norway and Sweden, achieved the target most years. Even those countries which fell far short of the target did not quite disagree with the logic or dispute the target, especially since the amounts involved were very small fractions not only of

their GNP but also of their public expenditure. Their arguments were concerned with the wasteful and inefficient use of these resources, the lack of absorption capacity of the public sectors and wrong policies in developing countries. If an appeal is made now to increase their contributions to fulfil the obligations of a human rights programme, it may not be difficult for those DAC countries to get approval from their electorate.

72. The table at the end of the present report provides two models for burden sharing of an additional $50 billion in ODA from the DAC member countries (on the basis of 1998 figures). In model 1, the burden share represents the weight of each individual country multiplied by the target of $50 billion, where weights are the ratios of GNP of individual countries to the sum of DAC GNP. Since this is additional to their existing contributions, it will increase the total contribution of some of the countries to a level that is disproportionately higher than others as a percentage of GNP, even though the additional commitments may not be that significant. In model 2, the five like-minded countries which have performed far better than others have been spared completely and the additional burden of $50 billion is allocated to the other 17 countries, raising their contributions uniformly to 0.44 per cent of GNP, still far below the old 0.7 per cent target. These are illustrative examples, and are only provided to show that raising an additional $50 billion per year should not be that difficult for the DAC countries, provided they agreed to set up the Fund for Financing Development Compacts in accordance with their commitments to support the human rights standards.

73. The manner in which such a fund operates can, however, be quite different from what is described above. If the callable commitments of the various members are made according to an agreed methodology, the support group would have flexibility in deciding who should bear the burden of helping the different countries. The financing requirements of a particular development compact will be determined after taking into account the possible contributions of IMF, the World Bank and other regional agencies. Then those donors which may be especially interested in the country and have joined the support group may assume some of the burden, up to the limits of their commitments to the Fund for Financing Development Compacts. After that the support group may request other members to commit funds voluntarily, but not exceed their total commitment. If these commitments do not cover the shortfall, the support group may recommend to the DAC that it call for the commitments of those countries that have a substantial gap between what they contribute and what they have committed. In all cases the guiding principle will be to build on a consensual procedure, through ongoing consultations.

74. The scheme that is elaborated above serves only to illustrate a mechanism for implementing the right to development as a human right. It is necessary to examine the details at the expert level and there is no doubt that alternative models can be suggested and possibly can be shown to be more workable. What is necessary is to start the discussion. It is time that the international community systematically takes up the task of implementing the right to development, which is the right to a process of development that realizes all the human rights and fundamental freedoms.

Two models for burden sharing of an additional $50 billion in ODA from the DAC member countries

	ODA Percentage of GNP 1988	ODA $US Mn. 1998	Weight[a]	Model 1 Burden share[b] $US Mn. 1998	Target ODA/GNP[c] Percentage	Model 2 Burden share[d] $US Mn. 1998
Australia	0.27	960	0.016	785	0.44	604
Austria	0.22	456	0.009	458	0.44	456
Belgium	0.35	883	0.011	557	0.44	227
Canada	0.3	1 707	0.025	1 256	0.44	797
Denmark	0.99	1 704	0.008	380	0.99	0
Finland	0.32	396	0.005	273	0.44	149
France	0.4	5 742	0.063	3 170	0.44	574
Germany	0.26	5 581	0.095	4 739	0.44	3 864
Greece	0.15	179	0.005	263	0.44	346
Ireland	0.3	199	0.003	146	0.44	93
Italy	0.2	2 278	0.050	2 515	0.44	2 734
Japan	0.28	10 640	0.168	8 390	0.44	6 080
Luxembourg	0.65	112	0.001	38	0.65	0
Netherlands	0.8	3 042	0.017	840	0.8	0
New Zealand	0.27	130	0.002	106	0.44	82
Norway	0.91	1 321	0.006	321	0.91	0
Portugal	0.24	259	0.005	238	0.44	216
Spain	0.24	1 376	0.025	1 266	0.44	1 147
Sweden	0.72	1 573	0.010	482	0.72	0
Switzerland	0.32	898	0.012	620	0.44	337
United Kingdom	0.27	3 864	0.063	3 160	0.44	2 433
United States	0.1	8 786	0.388	19 399	0.44	29 872
Total DAC	0.23	52 084	1.000	50 000		50 011

Source:

(i) OECD, *Development Co-operation: Efforts and Policies of the Members of the Development Assistance Committee 1998 Report*, (France: OECD, 1999). Statistical annex A7-A8, Table 4.

(ii) OECD, *Development Co-operation Annual Report 2000* at www.oecd.org.

(iii) Study on the current state of progress in the implementation of the right to development submitted by Mr. Arjun K. Sengupta, independent expert (E/CN.4/1999/WG.18/2), July 1999.

[a] Weight represents the ratio of GNP of individual countries to the sum of DAC GNP.

[b] Burden share represents the weight of each individual country multiplied by the target of US$ 50,000 million.

[c] For Denmark, Luxembourg, the Netherlands, Norway and Sweden the target ODA contribution has been taken as their actual ODA/GNP percentage contribution for the year 1998.

For all other DAC countries the target ODA/GNP percentage has been estimated at 0.44 per cent of GNP.

[d] Burden share has been calculated by subtracting the actual contribution in 1998 from the estimated contribution. The rates mentioned in the previous column have been used for arriving at the estimated contribution.

Notes

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[2] First report, E/CN.4/1999/WG.18/2; second report, E/CN.4/2000/WG.18/CRP.1; third report, E/CN.4/2001/WG.18/2. The OHCHR Web site (www.unhchr.ch) can be used to access the reports.

[3] See third report paragraphs 3-10.

[4] W.A. Lewis, *The Theory of Economic Growth*, London, Allen and Unwin, 1955, pp. 9-10, 420-421.

[5] See A. Eide, C. Krause, A. Rosas, *Economic, Social and Cultural Rights: A Textbook*. Martinus Nijhoff, pp. 1-40. As all individuals are entitled to have all of their human rights respected, protected and fulfilled by States and other agents and the international community, the issue of accountability for any failures is of paramount importance, so that remedial action can be taken against those who are responsible for those failures. In assessing culpability, it is important to ensure that human rights and human rights principles have been respected by all parties, both in the design and implementation of development policies and projects.

[6] UNDP, *Human Development Report 2000*, New York, Oxford University Press, 2000, p. 22.

[7] See third report, paragraphs 12-14, for further details.

[8] These are elaborated in the first report.

[9] Paragraphs 6-8.

[10] Amartya Sen, "The right not to be hungry", in Philip Alston and Katarina Tomasevski eds., *The Right to Food*, SIM, Netherlands, 1984. Sen talked about the right while discussing how the right not to be hungry or the right to food which for many countries may not be possible to guarantee for all persons in the near future, though "policies that would rapidly lead to such freedom do exist". So a right to x, such as not to be hungry, or the right to adequate means of livelihood, may be an abstract, background right, but to give a person the right to demand that policy be directed towards securing the objectives of making the right to food or the right to adequate means of livelihood a realizable right is a right to p (x), as a metaright to x, will be a real right.

[11] These principles are very well explained in "A human rights-based approach to development programming in UNDP - adding the missing link", by Patrick van Weerelt, UNDP, 2001.

[12] Eide has discussed the obligations of States to respect, protect and fulfil all rights in all human rights documents they have ratified (Asbjørn Eide, "Economic, social and cultural rights as human rights" in A. Eide, C. Krause, A. Rosas eds. *Economic, Social and Cultural Rights: A Textbook*, Martinus Nijhoff, pp. 1-40, 1995).

[13] Henry Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals*, 2nd ed. Oxford University Press 2000, pp. 182-184.

[14] International human rights law recognizes exceptional situations under which it is legitimate to restrict certain rights to achieve a broader public good. Both International Covenants include provisions addressing the limitations issue. Article 4 of the International Covenant on Economic, Social and Cultural Rights states: "The State Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society". The Limburg Principles also address limitations on economic, social and cultural rights.

Article 4 of the International Covenant on Civil and Political Rights (ICCPR) states, "1. In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other State Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reason by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation." In addition, the ICCPR allows for limitations on the rights guaranteed in articles 12, 14, 18, 19, 21 and 22.

Also see "The Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights", (E/CN.4/1985/4, annex), which provide a framework for analysing government actions limiting rights.

[15] The World Bank's Draft Operational Policies (OP4.10) is an example of how these issues could be approached.

[16] Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/23).

[17] See Katerina Tomasevski, *Development Aid and Human Rights Revisited*, Pinter Publisher, 1989, and articles by Haan Thoolan, "From human rights projects to strategies: the search for coherence", Philip Alston, "What's in a name: does it really matter if development

policies refer to goals, ideals or human rights?", and Clarence Dias, "Mainstreaming human rights in development assistance: moving from projects to strategies" in *Human Rights in Development Cooperation*, ed. Henny Helmich in collaboration with Elena Borghese, SIM Special No. 22, Netherlands Institute of Human Rights, Utrecht, 1998.

[18] J.P. Pronk: "Human Rights and development aid: Review of International Commission of Jurists", June 1977.

[19] In Henny Helmich ed. Human Rights in Development Cooperation, loc. cit.

[20] T. Stoltenberg: "Towards a world development strategy" in *One World or Several*, Louis Emmerij ed., (OECD, Paris, 1989). Stoltenberg talked about development contracts as comprehensive long-term commitments by industrial countries for development assistance to implement long-term development plans of the third world countries. This was taken up by others at the OECD Development Centre, when it was suggested that a development commission be formed to conduct continued dialogue between developing and industrial countries. The idea of a development compact is less ambitious and more linked to an understanding or an agreement between a developing country undertaking programmes of adjustment and reform and a group of industrial countries which would ensure the provision of necessary assistance to implement the programmes. The logic of reciprocal obligation was spelled out in the report of the IMF Group of 24, "The functioning and improvement of the international monetary system", *IMF Survey*, September 1985, and developed by Arjun Sengupta in "Multilateral compacts supporting economic reforms", part of the companion volume to *The Challenge to the South: The Report of the South Commission (1990)*, and in the UNDP *Human Development Report 1992*.

See also the first report of the independent expert (E/CN.4/1999/WG.18/2) of 27 July 1999.